

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Laguna Irrigation District,

Complainant,

vs.

Pacific Gas and Electric Company,

Defendant.

Case 02-04-006  
(Filed April 9, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING  
PROPOSING DISMISSAL WITHOUT PREJUDICE**

This ruling proposes to dismiss the above-noted complaint without prejudice. The parties are invited to comment on this proposal.

**Background**

The complaint in this case was filed on April 9, 2002. It alleged that the defendant, Pacific Gas and Electric Company (PG&E), had wrongfully terminated an Electric Service Provider (ESP) service agreement that PG&E had entered into with complainant, the Laguna Irrigation District (Laguna), on March 5, 1999. The complaint sought two separate but related forms of relief. First, Laguna requested an "emergency order" (in the nature of a temporary restraining order) prohibiting PG&E from switching Laguna's energy customers back to PG&E bundled electric service, and to the extent that such a customer switch had already occurred, ordering PG&E to return the switched customers back to direct access service from Laguna. Second, after "this initial safeguard is

in place," Laguna sought a declaratory judgment holding that PG&E had no valid basis for terminating the ESP Service Agreement with Laguna.

On May 23, 2002, PG&E filed an Answer and Statement of Position, as well as an Opposition to Request for Emergency Order. On June 10, 2002, the undersigned contacted counsel for PG&E and Laguna by e-mail for the purpose of scheduling a prehearing conference (PHC).

The parties did not respond to my e-mail until June 12, 2002. On that date, counsel for PG&E telephoned to inform me that, owing to the recent resignations of all five members of Laguna's Board of Directors, PG&E and Laguna had entered into a "standstill agreement" with respect to all of the outstanding litigation between them. In a follow-up letter dated June 13, 2002, counsel requested a postponement of the PHC, attached the standstill agreement, and explained it as follows:

"Over the past two weeks, all five members of the Laguna Irrigation District's Board of Directors have resigned. The Boards of Supervisors for Kings and Fresno Counties are now considering applications for new Board members. It is unclear exactly when the Board will be active again, or how the new Board will handle the four active litigation matters between PG&E and Laguna. Since the Board members' resignations, the last of which occurred just a few days ago, the parties have agreed to stop all activity in these four cases. The standstill shall remain in place until both (a) Laguna has a new active Board of Directors and (b) either party provides the other with 14 days written notice terminating the agreement. The objective of the standstill is to give Laguna enough time to appoint a new Board and resume its work, and allow the parties to determine how they wish to proceed in their litigation."

Since the June 13 letter, there has been no further communication from either party advising the Commission whether a new board for Laguna has been appointed, or of the likelihood that this litigation might again become active.

## Discussion

Section 1701.2(d) of the Public Utilities Code provides that under normal circumstances, adjudicatory cases such as this one are to be resolved within 12 months after they are initiated. This deadline will be difficult (if not impossible) to meet in view of the resignation of Laguna's board of directors, the standstill agreement that has resulted from this situation, and the uncertainty about when, if ever, this litigation might become active again.

Under these circumstances, it appears that the most appropriate course of action is to dismiss the case without prejudice. If there is a dismissal without prejudice, Laguna's new board will be free to file a new complaint if the board ultimately concludes that Laguna has a live, ongoing dispute with PG&E requiring resolution by the Commission.

If either party objects to the proposal to dismiss without prejudice, it should file comments no later than October 11, 2002 stating why the case should not be so dismissed. Any party filing such comments should state what progress has been made in appointing new directors for Laguna, what the current status of the standstill agreement is, and whether the parties have had any discussions about resuming active prosecution of this matter (and if so, when such a resumption might be expected to occur).

In accordance with the discussion above, **IT IS RULED** that:

1. Any party objecting to the proposed dismissal of this case without prejudice shall file and serve comments setting forth the reasons for such objection no later than October 11, 2002.
2. In its comments, the party objecting to dismissal without prejudice shall state (a) what progress has been made in appointing new directors for Laguna, (b) what the current status of the standstill agreement between the parties is, (c) whether the parties have had any discussions about resuming active

prosecution of this matter, and (d) if such discussions have occurred, when such a resumption might be expected to occur.

Dated September 27, 2002, at San Francisco, California.

/s/ A. KIRK MCKENZIE

A. Kirk McKenzie  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Proposing Dismissal Without Prejudice on all parties of record in this proceeding or their attorneys of record.

Dated September 27, 2002, at San Francisco, California.

/s/ TERESITA C. GALLARDO

Teresita C. Gallardo

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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